

REMARKS

Claims 1 and 13 have been amended and claim 5 has been canceled. Conforming amendments have also been made to claim 6. No new matter is added by any of the amendments. Claims 1-4, 6, 13 and 14 are presented for further examination.

The rejection of claims 1-6, 13 and 14 under 35 U.S.C. §103(a) over German Patent No. DE 198 22 944, the rejection of claims 1-6, 13 and 14 under 35 U.S.C. §103(a) over Kruecke et al., US Patent No. 6,080,799, the rejection of claims 1-6, 13 and 14 on grounds of obviousness-type double patenting over claims 1-25 of US patent no. 6,380,275, and the rejection of claims 1-6, 13 and 14 for obviousness-type double patenting over claims 1-15 of US patent no. 6,080,799 in view of Hintz, US 5,552,450 are each respectfully traversed, and reconsideration and allowance of the application are respectfully requested.

The rejections all appear to be based upon several significant misunderstandings with regard to the nature of the presently claimed invention and how it distinguishes over the prior art.

First, the rejections confuse the claimed premix with a prepolymer. For example, the next to last paragraph on page 2 of the Final Action states in pertinent part:

DE-198 22 944 discloses polyol premixes for the
preparation of foamed products

This is not correct. DE 198 22 944 does not disclose any premix. Rather, what DE 198 22 944 discloses is prepolymer. A premix and a prepolymer are not the same. The claimed premix contains (1) polyol, (2) blowing agent, (3) flameproofing agent, and (4) optional additives such as a catalyst or stabilizer, but no reactive isocyanate. Therefore, the premix does not polymerize, but instead is storage stable and can be transported and stored until it is needed for use. In contrast, the prepolymer (or propolymer) disclosed in DE 198 22 944 contains both a polyol and an isocyanate component that reacts with the polyol to

form a polymer. It is not storage stable, but instead polymerizes to form a polyurethane. In effect, it is a polymer in the process of being formed.

The ability or inability of a composition to polymerize is a material characteristic of that composition. Because the presence of the isocyanate renders the composition reactive and causes it to polymerize, it necessarily affects a material characteristic of the claimed premix, which is its storage stability until needed for use. Consequently, the presence of the reactive isocyanate is excluded by the "consisting essentially of" language of the claims.

With regard to Kruecke et al., US 6,080,799, relied upon for a rejection under 35 U.S.C. §103(a) as well as an obviousness-type double patenting rejection, Applicants note that the amended claims no longer embrace compositions comprising 1,1,1,2-tetrafluoroethane (R134a). Moreover, the claims have been amended to clarify that the flameproofing agent consists of triethyl phosphate and/or tris-chloroisopropyl phosphate. Thus, the compositions of Kruecke et al., US 6,080,799 containing brominated polyether polyols, which are outstanding flameproofing agents, are excluded by the "consisting of" language of the claim defining the flameproofing agent present in the invention.

Last but not least, the rejections appear to mistakenly associate the presence of the "flameproofing agents" in the reference compositions, with the absence of a flash point in the presently claimed premixes. The "flameproofing agents" of the prior art compositions function to reduce the flammability of the resulting polymer foams, as opposed to affecting the flammability of the reactants from which the polymers are formed. These flameproofing agents are not responsible for the absence of a flash point in the claimed premixes. This fundamental fact is demonstrated, *inter alia*, by the test data in the Declaration of Lothar Zipfel under 37 C.F.R. §1.132, which is of record. Table 2 on page 5 of the Declaration reports the results of flashpoint tests of a premix according to the present invention (last column) with various individual ingredients or combinations of ingredients. The second column of the table shows the flash points of mixtures of polyol and various concentrations of the propellant

pentafluorobutane (PFB). The flammability of the mixtures is apparent from the flash point values. The fourth column reports the results of flash point tests of corresponding compositions which additionally contain the flame retardant tris-chloro isopropyl phosphate (TCPP). Importantly, the measured flash point values do not differ significantly from those obtained for the polyol/blowing agent compositions without TCPP. Thus, it can be seen that the presence of the "flameproofing agent" does not significantly affect the flash point of the polyol/blowing agent compositions. Rather, the unexpected and surprising absence of a flash point in the premixes of the invention is attributable to solvent effects or solution properties of the specifically claimed combination of polyol, blowing agent mixture, and phosphorus compound in the claimed premix.

Notwithstanding the superficial similarities of the reference compositions and the presently claimed premixes, when the true nature of the invention and the disclosures of the references are properly understood, it becomes apparent that not only do none of the references disclose a premix composition as claimed, but that the cited references, considered individually or in any possible combination, do not suggest a premix as claimed or give any hint that it would be possible to prepare a premix which does not exhibit any flash point. Thus, the cited documents fail to render the presently claimed invention obvious to a person of ordinary skill in the art, and reconsideration and withdrawal of the obviousness rejections under 35 U.S.C. §103(a) and the obviousness-type double patenting rejections are respectfully requested.

The application is respectfully submitted to be in condition for allowance, and prompt, favorable action thereon is earnestly solicited.

If there are any questions regarding this Reply or the application in general, a telephone call to the undersigned at (202) 624-2845 would be appreciated since this should expedite the examination of the application.


If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and

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please charge any deficiency in fees or credit any overpayments to Deposit
Account No. 05-1323 (Docket #037110.52632US).

Respectfully submitted,

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J. D. Evans
Registration No. 26,269

CROWELL & MORING LLP
Intellectual Property Group
P.O. Box 14300
Washington, DC 20044-4300
Telephone No.: (202) 624-2500
Facsimile No.: (202) 628-8844
JDE:moi (*doc. #7403847*)